

### **Conclusion**

The argument for union membership is based on mutuality - workers have a common need for unions to defend and improve conditions - including professional autonomy and standards.

How successfully unions defend and improve wages and conditions is directly related to union density levels, the activism of members and the increased efficiency of unions. What a union is, what it will become and what it achieves depends on the membership. We get the union we deserve. The union is us - not them.

Karen Batt,  
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November 1994.

# **IT'S US - NOT THEM**

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## Platform Pamphlet No 3: Third in a series of pamphlets for H&CS workers.

### Introduction

The union is its membership and, therefore, the onus is on the members to make the union work for them. The union is us - not them.

It is at times of crisis that members of unions are decisive to the outcomes e.g., the election of an anti-union Coalition Government in 1992 and the current status of and threat to the Interim Award.

It is acknowledged that it is legitimate and inevitable that members and non-members will question the relevance of the union. A criticism that is not always articulated to the union is whether or not it is doing enough for its members. The criticism is always there and the criticism is always valid. It is always valid because there is always scope for improving and/or doing things differently.

There is, of course, a critical difference between those who legitimately question the relevance of a union and those who rationalize their non-membership - shifting the grounds of their objections.

Despite this evidence of continuing need there are members and non-members in H&CS who do not accept :

- ♦ the need for and relevance of unions;
- ♦ that the Federal Award required union intervention;
- ♦ that the content of the Final Award is an open negotiated process with limited pre-determined outcomes; and,
- ♦ that the retention of Federal Award coverage is ultimately dependent on the membership.

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It is important, therefore, to place this questioning within the context of those various conditions which influence the attitudes of members and non-members to union membership - beyond rationalizations.

**Free riding:** Free riding is when workers are willing to accept benefits created by unions without accepting the obligations of union membership.

**Submissiveness:** There are those workers who are afraid to join unions because it might displease managers and affect their career opportunities.

**Aggression:** There are managers who directly or indirectly threaten workers against their involvement in unions.

**Good intentions:** There are those workers who believe or want to believe that employers always or most of the time have good intentions towards their workers and are willing to accept, albeit reluctantly, the decisions of employers about their wages and conditions.

**Enlightenment:** There are those workers who may be dissatisfied with their wages and working conditions but who assume and/or hope that eventually employers will become enlightened as to what is appropriate.

**Political:** There are workers who agree with the Government that unions are a vested interest, who have become too powerful and need to be disempowered.

All these factors, in various ways and to different degrees, at different times, have and will continue to influence the attitudes of members and non-members. What is sad about these factors is that the union can be a creative and dynamic force in the reinvention of H&CS. This increases in proportion to the density and activity of union membership and the recognition that the union is us - not them..

The purpose of this pamphlet, therefore, is to explore the relevance of the union and why H&CS workers should be members.



Initially, there will be a brief analysis of the rationale for the union. Having established this context, a detailed analysis will attempt to identify the specific achievements of the union at H&CS - for members and non-members.

### **Rationale for Union**

The historical origin for trade unions was mutual aid - workers joining together to meet their mutual needs.

There is a conflict of interest between managers and workers in the private and public sectors.

The reality of this conflict transcends specific individuals and personalities. It recognizes that in each and every workplace there is a management interest and a worker interest.

Managers have an interest, for example, in minimizing their costs - including the wages of workers. Managers have an obligation to implement the policies of their private or public owners. Workers have an interest in maximizing wages to maintain and increase their standard of living i.e., increase costs to managers.

Unions are democratic institutions - with officials elected by the membership of the union. Private enterprise is not democratic with the board elected by a majority of shares (not shareholders) and management appointed by the board.

Public sector managers are appointed - not elected. This differing basis of appointment creates a critical difference in perspectives. Historically, however, public sector managers and workers have shared an interest in the common good.

Since the mid 1980s Labor and Coalition Governments have been reinventing the public sector to reflect and reinforce the values and practices of the private sector. This has reduced the common good

interest of workers and managers in the public sector.

The reality of these conflicts does not mean that reconciliation is not possible. It is and this is the whole basis for the Industrial Relations Act 1994 and the Statement of Wage Fixing Principles established by the Australian Industrial Relations Commission in August 1994 which provide for bargaining in good faith - recognizing that there are differences which can be reconciled through negotiated compromises. In contrast, the Victorian Government ignores the legitimacy of differences and the desirability of negotiation.

The election of the Coalition Government in October 1992 posed a challenge for the union movement. While there is an invariable tension between Government and unions, both compromise and influence were possible between 1982 and 1992 because of the Labor Government's unique relationship with the union movement.

### **Undermining Unions**

The Coalition Government, however, is opposed to the influence of trade unions and is dedicated to undermining this influence. A basic tenet of this opposition is a refusal to talk to and negotiate with unions. It is apparent that the Government perceives talk and negotiation as recognition and an indication of Government weakness.

While there has been some talk and limited negotiation since October 1992, these have been exceptional rather than normal. The Government did negotiate with unions on public sector superannuation because it feared a backlash if changes were believed to be unilateral and because it sought 'voluntary' agreement.

When the Employee Relations Commission decided, for instance, that unions and government should enter into enterprise bargaining with the Commission arbitrating, the Government announced that



the Commission had exceeded its powers and it would legislate to remove this power to arbitrate enterprise agreements retrospectively. This decision was despite an opportunity for the Government to run an argument during the case and appeal the decision.

Instead, the Government wants collective and individual employment agreements - based on the decisions of management which are agreed to by employers. At this point of time, there is no willingness to negotiate with individual employees - let alone unions.

Given this position of the Government, it is important not to underestimate the difficulties for unions and unionists. It is obviously difficult to talk to and negotiate with a government that is unwilling to both talk and negotiate most of the time.

It is also simplistic to blame the union for its lack of influence on the government - as if the government's refusal to negotiate is a fault of the union.

There are three basic mechanisms for unions to work with Government:

1. Through the process of negotiations.
2. Through industrial action to force and/or reinforce negotiations.
3. Through arbitration by an "independent" arbitrator.

In Victoria, since 1992, the Government has been generally unwilling to negotiate. The possibility for industrial action is dependent on the capacity and willingness of members to undertake action and the possibility of influencing a Government to negotiate. Arbitration is not a possibility within the general public sector because the Government using legislation to limit this option.

Given these considerations, therefore, it is difficult for unions to achieve gains for members. Gains in the past have been critically dependent on the willingness of employers to ultimately

compromise, the ability of unions to force compromises through industrial persuasion and action and a facilitating legislative and regulative framework.

This rationale for unions remains relevant today. The philosophy, policies and practices of the Coalition Government have demonstrated this by attempting to recreate industrial conditions of the 19th C and early 20th C.

### Everyday Achievements

The everyday achievements of unions are often ignored, and sometimes forgotten, except by specific individuals and workplaces who benefit from these interventions. The range of interventions include unfair dismissal, employer intimidation, unilateral transfers, proposed privatisation of work areas, grievance procedures, workplace re-location and selection procedures.

Recent examples of everyday interventions have included:

- ◆ Inadequate consultation on re-location. Resolved when senior management realized that reported consultation had not occurred.
- ◆ A member dismissed without regard to due process procedures. Resolved when worker reinstated for a time limited period under a requirement to resolve identified difficulties.
- ◆ A member's position being declared redundant. Resolved when management was embarrassed by declaring the wrong position redundant - as argued by the member and union.

There are other everyday interventions where members consult the union but positive outcomes are limited by the unwillingness of members to pursue an issue or the isolation of members within specific workplaces. What is possible to achieve in workplaces depends on union density and support in the workplace.

The outcome of everyday intervention is often to persuade management to observe due process i.e., everyday management



information and practices which results in managers better informing and communicating with workers.

### Specific Achievements

The major achievement for H&CS workers has been Federal Award coverage - achieved by the combined efforts of the ANF, HSUA and SPSF.

Federal Award coverage was achieved by the combined efforts of the unions. Securing coverage required unions to make application and to argue their case for inclusions and exclusions.

What is remarkable, yet understandable, is the extent that Federal Award coverage is taken for granted by members and non-members - protecting terms and conditions of employment that are not protected throughout the rest of the public service.

The Federal Award restored and protected employment terms and conditions which existed prior to the election of the Coalition Government in October 1992.

What the Federal Award also does is to create a framework for acceptable attitudes and behavior - imposing specific obligations on the union and H&CS.

What follows, therefore, is a brief comparison of current conditions for H&CS workers covered by the Federal Award and most of Victoria's other public servants who are covered by the Employee Relations and Public Sector Management Acts - demonstrating the reality of what has been achieved:

Federal Award coverage directly addresses the three ways that unions can influence government as an employer:

Issues	Federal Award	State Government
Wages	Award based wages with performance pay negotiable.	Performance based pay not negotiable.
Independent arbitration	Yes	No
Information provision	Parties have an obligation of disclosure.	No disclosure obligation on H&CS.
Award	Awards as safety net with increased emphasis on enterprise bargaining.	Awards difficult to create. Preference is for employment agreements.
Individual employment agreements.	Illegal under Interim Award but provision for could be negotiated under Final Award.	Preference is for individual agreements.
Consultation on major changes with significant effects.	Compulsory with employees and their unions with specified changes and effects.	Management prerogative but with employees not unions.
Rostering provision	Change consultation process specified with consultation with employees and their unions.	Management prerogative.
Transferring public sector workers into private for profit or not for profit organizations.	Requires transfer of existing wages and conditions of employment.	Does not require transfer of existing wages and conditions of employment.
Public holidays	Public holidays not available to other State workers.	Less public holidays.
Leave loading	Yes - 17.5%	No



egotiation: It requires H&CS to negotiate with employees and their unions.

- ◆ Industrial action: It legitimizes industrial action in pursuit of claims and prohibits retribution.
- ◆
- ◆ Arbitration: It provides for arbitration of disputes where agreement is not possible.

Federal jurisdiction provides difficulties - as well as benefits for H&CS workers. Employers can now create "house unions", or staff associations there is a de-emphasis on awards as a safety-net and an increased emphasis on enterprise bargaining, a move from national standards to local agreements, there will be pressure to exchange pay increases for longer hours, no or lower penalty rates, reduced conditions and less jobs.

The shift from the Interim Award to a Final Award is a complex process of negotiation between the union and H&CS. The outcome is not inevitable and the contents of the Interim Award will not predetermine the content of the Final Award. The Interim Award is itself under threat. When the Australian Industrial Relations Commission decided on the 10 September 1994 that the union had abandoned its 1991 log of claims, it created an ambivalent status for the Interim Award. Management adherence to the provisions of the Award is selective and an attempt by the union to take management "breaches" of the Award to the Commission could trigger a formal request to have the Award set aside.

Membership participation is critical to protecting Federal coverage and a Final Award. The union has embarked on a participatory process to facilitate this participation through the news and views newsletter Olive Leaf, pamphlets, the distribution of the Interim Award and the union's proposed Final Award and over 100 workplace meetings to discuss the Federal Award.

For the Commission the threat of and actual industrial action is the performance indicator which indicates that the membership supports the union log of claims - because the union is us and not them.

Another major achievement has been in child protection where the workload pressure on workers and their solidarity in resisting this and the capacity and willingness of Head Office child protection management to negotiate has led to a resolution of the dispute. This resolution has involved compromises by both management and workers.

The dispute has been driven by the willingness of child protection workers to take industrial action. In settling the dispute, H&CS agreed to a union proposal which involved:

- ◆ the establishment of a case allocation process which were subject to joint management and worker agreement
- ◆ the election of workplace monitors whose role is to monitor caseloads
- ◆ the establishment of an independent caseload appeals process.

In addition, H&CS has proposed the establishment of joint management and worker consultative forums. The first child protection consultative forum has been established in the Western Region.

Critical to this negotiated agreement is the willingness and capacity of members to enforce the agreement. In contrast to the Western Region, management in other regions has been slow to implement consultative mechanisms.